

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. 4:12-CR-252-SDJ
	§	
JOSE ARMAND LUCAS-VARGAS	§	
(4)	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Jose Armand Lucas-Vargas's Motion for Compassionate Release Pursuant to 18 U.S.C. § 3582(c)(1)(A). (Dkt. #807). The Government has filed a response in opposition. (Dkt. #808). Having considered the parties' filings, the record, and the applicable law, the Court **DENIES** Lucas-Vargas's motion.

I. BACKGROUND

Lucas-Vargas is currently serving a term of imprisonment at FCI Sheridan for conspiracy to distribute 500 grams or more of a mixture or substance containing methamphetamine, in violation of 21 U.S.C. § 846. He was originally sentenced to 230 months of confinement and five years of supervised release. (Dkt. #444). He then filed a motion for a sentence modification, and the court reduced his sentence to 180 months of confinement and five years of supervised release. (Dkt. #576). In return for the sentence reduction, Lucas-Vargas agreed not to file a subsequent motion for sentence modification under 18 U.S.C. § 3582(c). Since the Government failed to raise the prisoner's prior waiver in its response to the present motion, the Court decides this motion on its merits.

Lucas-Vargas’s anticipated release date is August 5, 2025. Citing evidence of his rehabilitation in prison and the disruption to his life due to extensive COVID-19 lockdowns and related prison program cancellations, Lucas-Vargas requests under 18 U.S.C. § 3582(c)(1)(A) that the Court reduce his sentence to time served and release him to the custody of ICE for deportation proceedings.

II. DISCUSSION

A. 18 U.S.C. § 3582(c)(1)(A)

A judgment of conviction imposing a sentence of imprisonment “constitutes a final judgment’ and may not be modified by a district court except in limited circumstances.” *Dillon v. United States*, 560 U.S. 817, 824, 130 S.Ct. 2683, 177 L.Ed.2d 271 (2010) (quoting 18 U.S.C. § 3582(b)); *see also* 18 U.S.C. § 3582(c). One such circumstance arises from 18 U.S.C. § 3582(c)(1)(A)(i), commonly referred to as compassionate release.

Section 3582(c) was enacted as part of the Sentencing Reform Act of 1984. Under the first iteration of the relevant provision, district courts were authorized to grant sentence reductions on the motion of the Director of the Bureau of Prisons (“BOP”) if the BOP could establish the following conditions: (1) extraordinary and compelling reasons warranted a sentence reduction; (2) a reduction would be consistent with the applicable policy statements of the Sentencing Commission; and (3) a sentence reduction was warranted after consideration of the sentencing factors in 18 U.S.C. § 3553(a). *United States v. Shkambi*, 993 F.3d 388, 391 (5th Cir. 2021). Notably, Congress did not define “extraordinary and compelling reasons” or otherwise indicate how that phrase should be interpreted other than to specify that

rehabilitation alone did not qualify. *Id.* (quoting 28 U.S.C. § 994(t)). Instead, Congress delegated that authority to the Sentencing Commission, directing it to “describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples.” 28 U.S.C. § 994(t).

The Sentencing Commission eventually followed Congress’s direction to describe “extraordinary and compelling reasons” and promulgated U.S.S.G. § 1B1.13. In application note 1 to Section 1B1.13, the Sentencing Commission described what circumstances constitute “extraordinary and compelling reasons” for purposes of Section 3582(c)(1)(A)(i). U.S.S.G. § 1B1.13 cmt. n.1. The Sentencing Commission essentially created four categories of “extraordinary and compelling reasons,” which can broadly be characterized as: (1) circumstances arising from certain medical conditions; (2) circumstances arising from the age of the defendant; (3) issues arising from the defendant’s family circumstances; and (4) other reasons that the BOP agrees are extraordinary and compelling in a specific case. *Id.* And because Section 3582(c)(1)(A) requires that any sentence reduction be consistent with the Sentencing Commission’s policy statements issued pursuant to Section 994(t), the policy statements contained in Section 1B1.13 were binding on district courts considering Section 3582(c)(1)(A)(i) motions. *See United States v. Garcia*, 655 F.3d 426, 435 (5th Cir. 2011) (holding that the Sentencing Commission’s policy statements issued pursuant to 28 U.S.C. § 994 are binding on district courts when considering motions brought under 18 U.S.C. § 3582(c)).

In 2018, Congress amended Section 3582(c)(1)(A) with the passage of the First Step Act. The amendment provided that, in cases where the BOP does not file a compassionate-release motion on the prisoner's behalf, the prisoner may personally file a motion for compassionate release. *Shkambi*, 993 F.3d at 391–92. This was the First Step Act's only change to the compassionate-release framework. *Id.* at 391. Thus, while prisoners, in addition to the BOP, may now file motions for compassionate release, Section 3582(c)(1)(A)(i)'s substantive requirements that govern a prisoner's entitlement to release remain the same. *See id.* at 392 (“But the [First Step Act] left undisturbed the other three § 3582 requirements.”).

Following the First Step Act's expansion of who may file a motion under Section 3582(c)(1)(A), courts were confronted with the question of whether the Sentencing Commission's definition of “extraordinary and compelling reasons,” which was promulgated prior to the First Step Act when such motions could only be filed by the BOP, remained binding on district courts when considering compassionate-release motions. The Fifth Circuit addressed this question in *Shkambi*, holding that, while U.S.S.G. § 1B1.13 is a policy statement applicable to Section 3582(c)(1)(A) motions filed by the BOP, it is inapplicable to Section 3582(c)(1)(A) motions filed by prisoners. 993 F.3d at 392–93.¹ Accordingly, while U.S.S.G. § 1B1.13 dictates the

¹ Several other circuits have similarly concluded that U.S.S.G. § 1B1.13 is inapplicable to such compassionate-release motions filed by prisoners. *See, e.g., United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021) (per curiam); *United States v. McCoy*, 981 F.3d 271, 281 (4th Cir. 2020); *United States v. Brooker*, 976 F.3d 228, 230 (2d Cir. 2020). *But see United States v. Bryant*, 996 F.3d 1243, 1262 (11th Cir. 2021) (holding that U.S.S.G. § 1B1.13 is an applicable, binding policy statement for all Section 3582(c)(1)(A) motions).

meaning of “extraordinary and compelling reasons” when a Section 3582(c)(1)(A) motion is filed by the BOP on a prisoner’s behalf, it does not do so when, as here, a Section 3582(c)(1)(A) motion is filed by a prisoner himself. *See id.* at 392 (“[T]he policy statement continues to govern where it says it governs—on the motion of the Director of the Bureau of Prisons. But it does not govern here—on the newly authorized motion of a prisoner.” (quotation omitted)). Therefore, when a prisoner files a compassionate-release motion, courts must determine what constitutes an “extraordinary and compelling reason” under Section 3582(c)(1)(A)(i).

B. Extraordinary and Compelling Reasons

Though the Court is not bound by the Sentencing Commission’s policy statement in U.S.S.G. § 1B1.13 and its accompanying application notes when considering compassionate-release motions filed by prisoners, the policy statement is not wholly irrelevant. Courts should still look to the policy statement for guidance in determining what constitutes an “extraordinary and compelling reason” for a sentence reduction when a prisoner files a compassionate-release motion. *See United States v. Thompson*, 984 F.3d 431, 433 (5th Cir. 2021) (“Although not dispositive, the commentary to the United States Sentencing Guidelines (‘U.S.S.G.’) § 1B1.13 informs our analysis as to what reasons may be sufficiently ‘extraordinary and compelling’ to merit compassionate release.”); *see also, e.g., United States v. Gunn*, 980 F.3d 1178, 1180 (7th Cir. 2020) (“The substantive aspects of the Sentencing Commission’s analysis in § 1B1.13 and its Application Notes provide a working definition of ‘extraordinary and compelling reasons’; a judge who strikes off on a different path risks an appellate holding that judicial discretion has been abused.”). Using the policy

statement as guidance when considering prisoner-filed compassionate-release motions is warranted for several reasons.

First, whether a compassionate-release motion is filed by the BOP or a defendant, the statutory standard governing the motion is the same. Section 3582(c)(1)(A) provides that its requirements for obtaining a sentence reduction apply “upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant.” 18 U.S.C. § 3582(c)(1)(A). And as noted above, the First Step Act did not change Section 3582(c)(1)(A)’s substantive requirements. Thus, a policy statement defining “extraordinary and compelling reasons” in the context of BOP-filed motions necessarily informs what “extraordinary and compelling” means in the context of defendant-filed motions because the same standard governs both motions. In other words, Section 3582(c)(1)(A)(i)’s “extraordinary and compelling reasons” phrase does not implicate shifting substantive meanings depending on who invokes the statute.

Congress’s application of a single standard to govern Section 3582(c)(1)(A) motions—whether filed by the BOP or by defendants—is also evident in Section 3582(c)(1)(A)’s exhaustion requirement. Before a prisoner can file a compassionate-release motion, he must first present his case to the BOP and request that the BOP file the motion on his behalf. *See* 18 U.S.C. § 3582(c)(1)(A). Fulfilling this exhaustion requirement would be a nonsensical exercise if the standard governing the defendant’s entitlement to release varied significantly depending on whether the BOP grants the defendant’s request. Defendants would request

compassionate release based on the interpretation of “extraordinary and compelling reasons” applicable to their motions while the BOP would evaluate such requests based on the interpretation applicable to its motions. The fact that defendants must first ask the BOP to file their compassionate-release motions before doing it themselves indicates that Congress intended no significant substantive distinction between BOP-filed and defendant-filed motions under Section 3582(c)(1)(A).

Using U.S.S.G. § 1B1.13 and its commentary as guidance to determine what is extraordinary and compelling in defendant-filed motions is further warranted by Congress’s mandate that the Sentencing Commission, rather than courts, determine what constitute “extraordinary and compelling reasons” warranting a sentence reduction under Section 3582(c)(1)(A)(i). *See* 28 U.S.C. § 994(t) (directing the Sentencing Commission to issue policy statements describing what constitute extraordinary and compelling reasons under Section 3582(c)(1)(A)); *Garcia*, 655 F.3d at 435 (concluding that Congress intended the Sentencing Commission’s policy statements to be binding on courts in Section 3582(c) proceedings). To be sure, the Fifth Circuit has held that there is no binding policy statement applicable here because the Sentencing Commission has yet to amend its guidelines to account for the fact that defendants can now file compassionate-release motions. *See Shkambi*, 993 F.3d at 392. But Section 1B1.13 and its commentary still provide substantial insight into what the Sentencing Commission considers to be an “extraordinary and compelling reason” because the statutory standard the Sentencing Commission was applying when it promulgated Section 1B1.13 has not changed.

Nor does Section 1B1.13 become useless as guidance for defendant-filed compassionate-release motions simply because its terms state that it applies to motions brought by the Director of the BOP. Section 1B1.13 and its accompanying application notes “provide a working definition of ‘extraordinary and compelling reasons’”—the standard that applies equally to BOP motions and prisoner motions. *Gunn*, 980 F.3d at 1180. Indeed, when the Sentencing Commission promulgated Section 1B1.13, its intent was not to specify a unique standard for BOP motions but rather to define “extraordinary and compelling reasons” for purposes of Section 3582(c)(1)(A). 28 U.S.C. § 994(t) does not direct the Sentencing Commission to adopt standards governing prisoner motions and standards governing BOP motions. Rather, Section 994(t) directs the Sentencing Commission to “describe what should be considered extraordinary and compelling reasons for sentence reduction” under Section 3582(c)(1)(A). And as the Sentencing Commission itself has explained, U.S.S.G. § 1B1.13 and its application notes constitute the Commission’s implementation of Section 994(t)’s directive. *See* U.S.S.G. § 1B1.13 cmt. background (“This policy statement implements 28 U.S.C. § 994(a)(2) and (t).”). Because Section 3582(c)(1)(A) governs BOP motions and prisoner motions alike, the Sentencing Commission’s definition of Section 3582(c)(1)(A)’s terms is instructive when considering a prisoner’s motion brought under Section 3582(c)(1)(A)(i).

For these reasons, the Court concludes that the “extraordinary and compelling reasons” applicable to defendant-filed motions are those that are similar in kind and scope to those listed in U.S.S.G. § 1B1.13’s application notes. Therefore, any proffered

“extraordinary and compelling reason” that is not contained in the Sentencing Commission’s policy statement should nonetheless be similar to those reasons in order to warrant release under the statute. In this sense, the Court’s analysis of whether Lucas-Vargas has presented “extraordinary and compelling reasons” warranting the sentence reduction he seeks will be significantly guided, though not strictly bound, by the Sentencing Commission’s description in U.S.S.G. § 1B1.13 and the accompanying application notes.

C. Lucas-Vargas’s Motion

i. Exhaustion

As an initial matter, the Court may consider Lucas-Vargas’s compassionate-release motion only if he first meets Section 3582(c)(1)(A)’s exhaustion requirement. A court may not consider any modification to a defendant’s sentence under Section 3582(c)(1)(A)(i) unless a motion for such a modification is made by the Director of the BOP or by a defendant who has fully exhausted his or her administrative remedies. 18 U.S.C. § 3582(c)(1)(A). Lucas-Vargas submitted a request to his warden requesting compassionate release, which the warden denied. As the Government concedes, Lucas-Vargas therefore satisfies the administrative exhaustion requirement.

ii. “Extraordinary and Compelling Reasons” Warranting Release

Although Lucas-Vargas satisfied the threshold exhaustion requirement, his motion must be denied because he has failed to present “extraordinary and compelling reasons” within the meaning of Section 3582(c)(1)(A)(i). Lucas-Vargas offers two primary reasons that he argues warrant his release: (1) he has made significant rehabilitation efforts while in prison, and (2) the COVID-19 lockdown

measures implemented by the BOP have made his sentence harsher. Neither of these are “extraordinary and compelling reasons.”

“Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.” 28 U.S.C. § 994(t). Lucas-Vargas asserts that he has taken thirty-seven self-improvement related programs, completed his GED, and became qualified to tutor. While these actions are commendable, they alone cannot warrant release. *See United States v. Hudec*, No. 4:91-1-1, 2020 WL 4925675, at *5 (S.D. Tex. Aug. 19, 2020) (“While the Court is permitted to consider post-sentencing rehabilitation in determining whether to grant an eligible defendant a sentence reduction, it is not authorized to grant a reduction based upon post-sentencing rehabilitation alone.”). Therefore, Lucas-Vargas must present some other extraordinary and compelling reason similar in kind to those enumerated by the Sentencing Commission. He fails to do so.

The “lockdown measures” that Lucas-Vargas describes in his motion are no longer in place. FCI Sheridan is at Operational Level 1, which means that only very limited restrictions exist and that services are operating normally.² And, in any event, “extraordinary” circumstances are limited to those “unique to the life of the prisoner.” *United States v. Escajeda*, 58 F.4th 184, 186 (5th Cir. 2023). Lucas-Vargas’s “added hardship due to lockdown presents no difficulty that would set it apart from the hardship faced by any other inmate.” *United States v. Nahidi*, 4:17-CR-00159, 2022 WL 2673232, at *5 (E.D. Tex. July 11, 2022). Thus, Lucas-Vargas has failed to

² <https://www.bop.gov/locations/institutions/she/>

present any “extraordinary and compelling reason” that would justify granting his motion.

iii. Section 3553(a) Factors

Even if Lucas-Vargas could establish that “extraordinary and compelling reasons” warrant his release, his motion for compassionate release would still fail because the sentencing factors under 18 U.S.C. § 3553(a) weigh against him. Lucas-Vargas has failed to show how releasing him before he serves the full term of his sentence would align with the statutory sentencing factors—notably the seriousness of his offense, the need to promote respect for the law, the need to provide just punishment for the offense, and the need to deter others from similar criminality. 18 U.S.C. § 3553(a).

Lucas-Vargas was a participant in a drug-trafficking conspiracy. (Dkt. #389 ¶¶ 10–26). Upon execution of a search warrant at his home, officers found 913 grams of methamphetamine, nine firearms, and a ballistic vest. (Dkt. #389 ¶ 25). Lucas-Vargas was also responsible for 5,943 grams of methamphetamine that his associates had transferred from his residence to a storage facility on the day of his arrest. (Dkt. #389 ¶ 26). He subsequently pleaded guilty to conspiracy to distribute and possess with intent to distribute 500 grams or more of a mixture or substance containing methamphetamine. (Dkt. #389 ¶¶ 1, 4).


The Court recognizes that Lucas-Vargas has been largely misconduct-free while incarcerated, except for one incident involving the possession of a cell phone. While incarcerated, he obtained his GED, completed at least thirty-seven prison programs, and tutors English as a Second Language. And the Court commends him

for doing so. But Lucas-Vargas fails to show how his early release for a serious drug crime would adequately reflect the nature of his offense, promote respect for the law, and provide just punishment. Considering all the relevant factors, the Court concludes that the sentence originally imposed remains sufficient, but not greater than necessary, to comply with the purposes of Section 3553(a). Lucas-Vargas's motion is also denied on this basis.

III. CONCLUSION

For the foregoing reasons, Defendant Jose Armand Lucas-Vargas's Motion for Compassionate Release Pursuant to 18 U.S.C. § 3582(c)(1)(A), (Dkt. #807), is **DENIED**.

So ORDERED and SIGNED this 30th day of October, 2023.


SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE